

STATE OF MICHIGAN
COURT OF APPEALS

RONALD BILECKI,

Plaintiff-Appellant,

v

WILLIAM SPURRIER,

Defendant-Appellant,

and

CITY OF DETROIT,

Defendant.

UNPUBLISHED

August 3, 2001

No. 223081

Wayne Circuit Court

LC No. 98-800923-NO

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). It appears that the trial court granted defendant's motion pursuant to MCR 2.116(C)(10). Such a motion tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

A business owner is liable to invitees for injuries resulting from an unsafe condition on his premises. *Berryman v Kmart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992). An invitor has a duty to take reasonable measures within a reasonable time to diminish the hazard of injury to an invitee created by an accumulation of snow and ice on land the invitor possesses. *Orel v Uni-Rak Sales Co, Inc*, 454 Mich 564, 567, 569; 563 NW2d 241 (1997); *Anderson v*

Wiegand, 223 Mich App 549, 553-555; 567 NW2d 452 (1997). “Property owners have no duty to maintain public sidewalks abutting their property free from the natural accumulation of ice and snow, even where the property owner is a business invitor and the person injured is an invitee. However, the landowner whose property abuts a public sidewalk may be held liable for a slip and fall injury where he or she has undertaken to clear the snow or ice and has increased the hazard of walking across the sidewalk.” *Morton v Goldberg*, 166 Mich App 366, 368-369; 420 NW2d 207 (1988) (citations omitted). If the landowner clears or salts the sidewalk and the snow melts and refreezes, the landowner may be liable. *Mendyk v MESC*, 94 Mich App 425, 435; 288 NW2d 643 (1979).

In this case, plaintiff presented no evidence to show that the city ceded possession and control of the sidewalk to defendant. Nor did he present any evidence that defendant had cleared the snow from the sidewalk or salted it. There was some evidence that a vendor sometimes plowed the sidewalk, but no evidence that he had plowed the snow that was piled up by the curb on the day of the accident. Even if plaintiff had evidence to that effect, he had no evidence other than his own speculation that the ice on the sidewalk had formed by the shoveled snow melting and refreezing. Absent evidence that defendant, through some affirmative act or omission, directly or indirectly caused an increased hazard, defendant was entitled to judgment. *Morton*, *supra* at 371-373.

Plaintiff contends that the fact that defendant had vendors display their wares beside the sidewalk, thus using it as a de facto shopping aisle, “transforms the case from a sidewalk slip and fall to a case involving a dangerous condition on a premises.” As a procedural matter, plaintiff has failed to preserve the issue by citing any authority in support of this contention, *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993), and thus appellate review is precluded. *Sowels v Laborers Int’l Union of North America*, 112 Mich App 616, 624; 317 NW2d 195 (1981). As a substantive matter, premises liability is conditioned on possession and control of the property, *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 178 (1980), and, as noted above, plaintiff has not shown that defendant was given or had assumed possession and control of the city sidewalk.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin